



June 4, 2020

Andrew Wheeler, administrator  
U.S. Environmental Protection Agency  
Washington, D.C.

Sent via FOIA Online Portal

Dear Administrator Wheeler,

Please consider this a request made under the federal Freedom of Information Act, 5 U.S.C. § 552.

This request seeks records concerning a Notice of Intent to Sue (the "Notice") filed with EPA on or about June 4, 2019, by the Ohio Valley Environmental Coalition and other groups ("the groups") concerning alleged violations of water discharge limits by Bluestone Coal at its Red Fox Mine, operating under WV NPDES permit NumberWV1006304.

Please provide me with the following:

1. Any response(s) provided by EPA to the groups concerning the notice.
2. Any correspondence, including emails and any attachments, between EPA and Bluestone Coal or its representatives concerning the notice.
3. Any correspondence, including emails and any attachments, between EPA and any other governmental agency, state or federal, including the West Virginia Department of Environmental Protection and the federal Office of Surface Mining concerning this notice.
4. Copies of any enforcement actions taken by EPA regarding the specific violations alleged in the notice.
5. Copies of correspondence among EPA officials concerning the alleged violations and any actions considered in response to the notice.

I would like to receive the information in the following format: electronic.

I am available to discuss the scope of the request and any questions by phone (304-543-5414) or email ([ken.ward.jr@propublica.org](mailto:ken.ward.jr@propublica.org)).

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. This information is being sought on behalf of ProPublica, an independent, nonprofit news organization, for dissemination to the general public.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities, specifically EPA's enforcement of water pollution rules and permit limits as it relates to coal-mining operations in West Virginia, including those owned by the governor of the state, who is a close political ally of President Donald Trump.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I also ask that this request be expedited under terms of the Freedom of Information Act. Expedited processing is allowed for requests where the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning "actual or alleged Federal government activity." As the Act states, you have 10 days to decide whether to grant expedited processing. Our rationale for expedited processing is as follows:

As a staff reporter at ProPublica, I am primarily engaged in disseminating information to the public at large, thus fulfilling part of the rationale for expedited processing. ProPublica is a non-profit, investigative newsroom primarily engaged in disseminating information in the public interest. Since we began publishing in 2008, ProPublica has received six Pulitzer Prizes, eight George Polk Awards, and four Peabody Awards, among other recognitions of journalistic excellence.

We publish content daily on our website, [propublica.org](http://propublica.org). We are actively investigating and publishing information about West Virginia Gov. Jim Justice and his business holdings, examining the conflicts of interest created by those businesses as they interact with government agencies.

Coal mining can be an environmentally damaging activity and the records requested in this case concern allegations of ongoing pollution violations that it appears EPA has taken no actions to remedy, prompting the notice and a subsequent federal court lawsuit (<https://www.documentcloud.org/documents/6935751-2020-06-03-Bluestone-CWA-Ruling.html>). In September 2016, EPA entered into a consent decree with Gov. Justice's companies which purported to require actions to control and end pollution violations at the mining operation in question. But violations have continued, and there is an urgent need to inform the public about EPA's actual or alleged activity in enforcing the Clean Water Act at the mining operation.

In requesting these records, we hope to primarily engage in the dissemination of information (i.e., reviewing the records and reporting on these records and sharing our findings with the public) where there is an urgency to inform the public concerning actual or alleged Federal Government activity," as the compelling need provision requires.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

I look forward to your reply, as the statute requires.

Thank you for your assistance.

Sincerely,

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